

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL MEMORANDUM

HB 607 – SB 673

June 12, 2009

SUMMARY OF AMENDMENT (010016): Deletes all language after the enacting clause. Requires an offender convicted of the Class B felony offense of aggravated robbery committed with a firearm on or after July 1, 2009, if the person has a prior conviction for a dangerous felony as defined in Tenn. Code Ann. § 39-17-1324(i), to serve a mandatory minimum of 75 percent of the sentence imposed undiminished by sentence reduction credits earned or retained. If the offender has a prior conviction for any felony, the offender would be required to serve a mandatory minimum of 65 percent of the sentence imposed undiminished by sentence reduction credits earned or retained. Requires all aggravated burglaries, committed on or after July 1, 2009, a defendant commits within a 24-hour period to be counted as separate prior convictions for purposes of determining whether the defendant is a multiple, persistent, or career offender under the Criminal Sentencing Reform Act. Effective July 1, 2009, prohibits a judge from imposing sentencing alternatives of continuous confinement in a local jail or the Department of Correction (DOC) when sentencing a defendant convicted of forgery under Tenn. Code Ann. § 39-14-114, where the amount of the forgery is less than \$1,000, or criminal simulation under Tenn. Code Ann. § 39-14-115. Authorizes a judge to sentence the defendant to community corrections, probation, pre-trial diversion, or judicial diversion. If the sentencing court determines the defendant has multiple convictions and is not a suitable candidate for community corrections, probation, pre-trial diversion, or judicial diversion, the defendant may be sentenced to a period of continuous confinement. If the offender is also convicted of another felony offense, the defendant may be sentenced to a period of continuous confinement.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$1,808,500/Incarceration*

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures - \$2,000,100/Incarceration*
\$342,600/Board of Probation and Parole

Decrease State Expenditures - \$3,384,600

HB 607 – SB 673

Assumptions applied to amendment:

- The Class B felony of aggravated robbery is defined as robbery accomplished with a deadly weapon or display of any article used to lead the victim reasonably to believe it is a deadly weapon, or where the victim suffers serious bodily injury.
- According to the Department of Correction (DOC), for the period FY97-98 through FY07-08, 41 percent of admissions were violators returning to prison. According to DOC, there has been an average of 671 admissions for aggravated robbery in each of the past 10 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in 71 additional offenders in the tenth year. DOC estimates 41 percent (304) would have a prior conviction and 30 percent (92) of those would have a prior conviction for a dangerous felony and would serve additional time on their sentence as a result of this bill. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 92 offenders.
- According to DOC, the average operating cost per offender per day for calendar year 2009 is \$59.80. According to DOC, the average length of sentence for an offender convicted of aggravated robbery is 9.19 years and the average post-conviction time served is 5.99 years. Seventy-five percent of the average length of sentence would be 6.89 years (9.19 years x 75%). These 92 offenders would serve an additional 0.9 years (an increase from 5.99 years to 6.89 years) as a result of this bill. The cost per offender at 5.99 years is \$130,832.83 (\$59.80 x 2,187.84 days). The cost per offender at 6.89 years is \$150,490.88 (\$59.80 x 2,516.57 days). The additional cost of increasing the average sentence length from 5.99 years to 7.81 years is \$19,658.05 (\$150,490.88 - \$130,832.83). The total additional operating cost for 92 offenders is \$1,808,540.60 (\$19,658.05 x 92).
- Sixty-five percent of the average length of sentence would be 5.97 years (9.19 years x 65%). No additional incarceration costs for the remaining 212 offenders with prior convictions to serve a mandatory minimum 65 percent of the sentence imposed. These offenders are serving more than 65 percent of the sentence imposed.
- No recidivism discount has been applied since the length of the additional sentence is not sufficient for any re-offenders to serve additional time in the prison system under current law within the time added by this bill.
- Under current law, with the exception of certain felonies, felonies committed within a 24-hour period constitute one conviction for the purpose of determining prior convictions. Aggravated burglary is a Class

C felony with a sentence ranging from three to 15 years. Under the proposed bill, two to four prior convictions would increase the sentencing range of a standard offender from three to six years to six to 10 years at 35 percent. Five or more priors would classify the offender as persistent and increase the sentencing range to 10 to 15 years at 45 percent. A career offender would be sentenced to 15 years at 60 percent.

- According to the Department of Correction (DOC), there has been an average of 1,186 admissions for aggravated burglary in each of the past 10 years. DOC assumes one percent (11.86) of the total admissions for aggravated burglary would receive an elevated sentence as a result of this bill. The average length of sentence for an offender convicted of aggravated burglary is 4.38 years and the average post-conviction time served is 3.83 years. Population growth will result in one additional offender. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 13 offenders divided into Range II (8), Range III (4), and Career (1) offenders.
- According to DOC, 21 percent of offenders will re-offend within one year of their release. A recidivism discount of 21 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (8 offenders x 21% recidivism discount = 1.68 offenders). No additional incarceration costs for these six (8-2) offenders currently serving an average of 3.83 years which is more than an eight-year minimum sentence at 35 percent (2.8 years).
- Four offenders would serve an additional 1.8 years as a persistent offender (an increase from 3.83 years to 5.63 years at 45 percent). According to DOC, the average operating cost per offender per day for calendar year 2009 is \$59.80. The cost per offender at 3.83 years is \$83,654.82 (\$59.80 x 1,398.91 days). The cost per offender at 5.63 years is \$122,970.33 (\$59.80 x 2,056.36 days). The additional cost for increasing the average sentence length from 3.83 years to 5.63 years is \$39,315.51 (\$122,970.33 - \$83,654.82). A recidivism discount of 42 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill (4 x 42% = 1.68). The maximum cost is based on two offenders (4-2). The total additional operating cost for two offenders is \$78,631.02 (\$39,315.51 x 2).
- One offender would serve an additional 5.17 years as a career offender (an increase from 3.83 years to 9.0 years at 60 percent). The cost per offender at 3.83 years is \$83,654.82 (\$59.80 x 1,398.91 days). The cost per offender at 9.0 years is \$196,577.55 (\$59.80 x 3,287.25 days). The additional cost for increasing the average sentence length from 3.83 years to 9.0 years is \$112,922.73 (\$196,577.55 - \$83,654.82). Due to

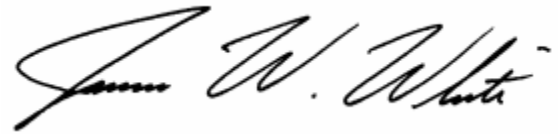
the small number of offenders, no recidivism discount has been applied for career offenders. The total additional cost for one offender is \$112,922.73.

- Incarceration costs will increase by \$2,000,094.35 (\$1,808,540.60 + \$78,631.02 + \$112,922.73).
- Additional assistant district attorney or assistant public defender positions cannot be created or funded absent statutory authorization. This bill does not authorize the creation of more positions.
- According to DOC, there has been an average of 384 admissions for forgery, six admissions for criminal simulation, and four admissions for criminal simulation up to \$1,000 in each of the past 10 years. The proposed amendment diverts the number of non-violent offenders admitted for these offenses to the Community Corrections Supervision Program rather than incarceration in state custody.
- The 10-year average number of admissions (384) for these offenses will be reduced in two areas. In the joint reduction plan, 577 offenders will be diverted from prisons and local jails to the Board of Probation and Parole (BOPP). In order to avoid double-counting of these offenders, DOC estimates 87 (15 percent) of the 577 offenders targeted for diversion under the joint reduction plan would have committed either forgery up to \$1,000, criminal simulation, or criminal simulation up to \$1,000 ($577 \times 15\% = 86.55$) and would not be included in the fiscal impact of this bill.
- DOC estimates that 99 (25 percent of the 394 admissions) would be convicted of an offense other than forgery up to \$1,000, criminal simulation, or criminal simulation up to \$1,000 and would be sentenced to continuous confinement and would not be included in the offenders being diverted as a result of this bill.
- There would be a total of 208 offenders ($394 - 87 - 99$) diverted from local jails to the Community Corrections Supervision Program. According to BOPP, the average daily cost of this program is \$4.51 per day per offender. This cost includes the cost of offender supervision, treatment services, and operations. BOPP estimates an increase in state expenditures of \$342,633.72 ($\$4.51 \times 365.25 \text{ days} \times 208 \text{ offenders}$).
- DOC reimburses local jails at an average cost of \$44.55 per day per offender. There would be a reduction in state expenditures from the state prosecution account of \$3,384,552.60 ($\$44.55 \times 365.25 \text{ days} \times 208 \text{ offenders}$) as a result of diverting these offenders and transferring some other offenders currently housed in local jails to state prisons to replace the offenders being diverted from prison to community corrections.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large initial "J" and a distinct "W".

James W. White, Executive Director

/lsc